IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2289 OF 2005

Bharatiya Arogya Nidhi & Ors. ..Petitioners.

V/s.

Mr.R.D.Dhanorkar & Ors. ..Respondents.

Mr.Omprakash Parihar i/b Arpan Rajput & Co. for petitioners.

Mrs.G.P.Mulekar, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 19, 2005.

P.C. :

1. Heard counsel for the parties.

2. By this petition, petitioners pray that the criminal complaint registered by the respondent No.1 against the petitioners before the Court of Additional Chief Metropolitan Magistrate, 38th Court at Ballard Pier, Mumbai being C.C.No.2282/SS/2004 in relation to the offence under clause 42 for contravention of Section 25 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme 2002 read with 3(3) of Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981 be quashed.

3. The first argument canvassed before me during the course of argument is that the petitioner is Public Trust running hospital for which reason Act of 1981 has no application. In support of this submission, reference is made to section 1(4) of the Act which provides that the act applies to person who work as security guards in any factory or establishment and who are not direct regular employees of the factory or the establishment as the case may be. Indeed, the petitioners may be justified in contending that the petitioner No.1 is a Public Trust and is running hospital therefore, is not a factory. However, the argument clearly overlooks the expansive definition of "establishment" to which the act is made applicable. Section 2(4) of the Act defines "establishment" as an establishment as defined in Clause (8) of Section 2 of the Bombay Shops and Establishments Act, 1948. Section 2(8) of the Bombay Shops and Establishments Act, 1948 defines the expression "establishment" as a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purpose of this Act. The

expression "establishment" as defined in section 2(8) of the Act of 1948 makes reference to commercial establishment. The Act of 1948 provides that the commercial establishment means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1860(XXI of 1860), and a charitable or other trust, whether registered or not, which carries on whether for purposes of gain or not any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment. This expression therefore, clearly covers the petitioners' Trust and its activities of running hospital. Viewed in this perspective argument that the Act has no application to the case in hand will have to be negated.

4. To get over this position, counsel for the

petitioners would then contend that the petitioners have employed services of three persons allotted to them by M/s.Avon Enterprises to work as gardener in their hospital. It is contended that as the services of those persons employed is of gardener, they are not covered by definition of Security Guard or Private Security Guard within meaning of section 2(10) of the Act. This explanation was offered to the Inspector of Security Guard particularly for Greater Bombay and Thane District. But the Inspector proceeded to file present complaint. Whether the persons employed by the petitioners are discharging the work of gardeners or as security guards is a matter which will have to be established at the trial. No satisfactory evidence was offered by the petitioners in response to the show cause notice. The opinion reached by the appropriate authority is its subjective satisfaction. The authority has proceeded to register the present complaint only thereafter. Accordingly, these aspects will have to be considered at the trial for which reason prayer for quashing of complaint cannot be accept at this stage. In case the petitioners succeed in establishing the position that the three persons employed by them deputed by M/s.Avon Enterprises are discharging the work of gardeners and not of security

guards, the trial Court will be to bound pass appropriate order. All question in that behalf are left open.

5. It is lastly contended that the two security guards employed by the petitioners were made available by M/s. Trig Detectives (P) Ltd. An application for exemption is pending consideration before the appropriate authority. The fact remains that the exemption is yet to be granted. So long as no exemption is granted, the petitioners will be obliged to comply with the provisions under scheme of 2002.

6. Viewed in this perspective, it is not a case for quashing of criminal complaint.

7. Counsel for the respondent No.1 contends that even if exemption was to be granted in favour of the petitioner, that will only have prospective effect. It is not necessary for me to examine that aspect for the time being and that question is left open, to be heard at the appropriate stage of proceedings. Hence, dismissed.